



2005 ASSEMBLY BILL 509

June 23, 2005 - Introduced by Representatives ALBERS, MUSSER, AINSWORTH, PETROWSKI, KREIBICH, HAHN, F. LASEE, GOTTLIEB, VOS, LEMAHIEU, HUNDERTMARK, GUNDERSON, WIECKERT, MURSAU, GRONEMUS and JESKEWITZ, cosponsored by Senators BRESKE, BROWN, GROTHMAN and SCHULTZ. Referred to Committee on Urban and Local Affairs.

1 **AN ACT** *to repeal* 893.83 (2); and *to renumber and amend* 893.83 (1) of the
2 statutes; **relating to:** liability of cities, villages, towns, and counties for
3 damages caused by an insufficiency or want of repair of a highway.

Analysis by the Legislative Reference Bureau

Under current law, cities, villages, towns, and counties are immune from claims arising out of the performance of a discretionary duty, or duty that requires a governmental entity to use judgment or discretion in carrying out the duty. Cities, villages, towns, and counties are liable for damages of up to \$50,000 arising out of the performance of a nondiscretionary duty.

Also under current law, cities, villages, towns, and counties are liable for damages of up to \$50,000 to a person or property resulting from an insufficiency or want of repair of a highway, which includes shoulders, sidewalks, and bridges. Cities, villages, towns, and counties are also liable for damages resulting from the accumulation of snow or ice that has existed on a highway for at least three weeks.

The Wisconsin Supreme Court in *Morris v. Juneau County*, 219 Wis. 2d 544 (1998), held that the statutory provision imposing liability on cities, villages, towns, and counties for highway defects is an exception to the more general provision granting immunity to cities, villages, towns, and counties from liability arising out of the performance of discretionary duties.

Finally, under current law, if the negligence or deliberate wrongdoing of a person contributes to the creation of a highway defect that results in damages to a person or property, the negligent or wrongdoing person is primarily liable and the

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city, village, town, or county is secondarily liable only if the negligent person or the person who committed the wrong does not satisfy the judgment, and the city, village, town, or county is otherwise liable for the damages.

This bill eliminates the specific immunity exception under which cities, villages, towns, and counties may be held liable for an insufficiency or want of repairs of a highway. This bill does not affect the immunity exception under which cities, villages, towns, and counties may be held liable for damages of up to \$50,000 for the accumulation of snow or ice that has existed on a highway for at least three weeks. The bill also eliminates secondary liability for cities, villages, towns, and counties.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 893.83 (1) of the statutes is renumbered 893.83 and amended to
2 read:

3 **893.83 Damages caused by highway defects accumulation of snow or**
4 **ice; liability of municipality city, village, town, and county.** If damages
5 happen to any person or his or her property by reason of the insufficiency or want of
6 repairs of any highway that any town, city, or village is bound to keep in repair, the
7 person sustaining the damages has a right to recover the damages from the town,
8 city, or village. If the damages happen by reason of the insufficiency or want of
9 repairs of a highway that any county by law or by agreement with any town, city, or
10 village is bound to keep in repair, or that occupies any land owned and controlled by
11 the county, the county is liable for the damages and the claim for damages shall be
12 against the county. If the damages happen by reason of the insufficiency or want of
13 repairs of a bridge erected or maintained at the expense of 2 or more towns, cities,
14 villages, or counties, the action shall be brought against all of the towns, cities,
15 villages, or counties that are liable for the repairs of the bridge. Upon recovery of
16 judgment, the damages and costs shall be paid by the towns, cities, villages, or

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1 ~~counties in the proportion in which they are liable for the repairs. The court may~~
2 ~~direct the judgment to be collected from each town, city, village, or county for its~~
3 ~~proportion only. The amount recoverable by any person for any damages so~~
4 ~~sustained shall not exceed \$50,000. The procedures under s. 893.80 shall apply to~~
5 ~~the commencement of actions brought under this subsection. No action may be~~
6 ~~maintained against a city, village, town, or county to recover damages for injuries~~
7 ~~sustained by reason of an accumulation of snow or ice upon any bridge or highway,~~
8 ~~unless the accumulation existed for 3 weeks. Any action to recover damages for~~
9 ~~injuries sustained by reason of an accumulation of snow or ice that has existed for~~
10 ~~3 weeks or more upon any bridge or highway is subject to s. 893.80.~~

11 **SECTION 2.** 893.83 (2) of the statutes is repealed.

12 **SECTION 3. Initial applicability.**

13 (1) This act first applies to actions arising on the effective date of this
14 subsection.

15 (END)